

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 1 1996

In the Matter of)
)
Implementation of section 302 of) CS Docket No. 96-46
the Telecommunications Act of 1996)
)
Open Video Systems)

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

This Notice of Proposed Rulemaking (NPRM) proposes rules to implement new 653 of the Communications Act.¹ That provision of the Act gives a local exchange carrier the option to provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with the Act and Commission regulations promulgated under Section 653.

The National Telephone Cooperative Association ("NTCA") is a national association representing approximately 500 small and rural independent local exchange carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America. Many NTCA members provide cable as a result of having received authority under the prior rural exemption. These companies, like most LECs, have an interest in continuing to provide cable in the most economic and technically feasible manner. They like other LECs have little experience operating under the prior video dialtone model but are interested in participating

¹ Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996) (hereafter 1996 Act), § 653(b).

in video delivery models that will develop under the “open video systems” model whenever that model becomes economically and technically feasible.

NTCA generally urges the Commission to adopt simple rules at this time to allow the industry to develop in response to the market. This type of approach will promote rather than inhibit the service and provide an incentive for LECs to enter the video delivery market in competition to traditional cable services. Small LECs, in particular, should not be burdened with hard fixed and complex rules that will act as a barrier rather than an incentive for them to provide the service as it emerges and becomes a viable option for them.

The Commission specifically asks what type of regulatory approach it should adopt to ensure that open video system operators allocate capacity on a non-discriminatory basis.² NTCA supports a regulatory approach that simply prohibits discrimination against unaffiliated programmers in the allocation of capacity. It would be premature for the Commission to address the specific issues that will arise in connection with the allocation of channels. The Commission has adequate tools to enforce its regulations under Section 653. It does not need to overregulate to ensure compliance with the statute. Section 653(a)(2) specifically provides authority to the Commission to resolve disputes under its regulations on a case by case basis. It also recognizes that aggrieved parties will have available damages proceedings and other remedies under the Act.

² NPRM at ¶ 12.

The Commission also asks what type of rule it should adopt in connection with the certification of open video systems. The certification provision of Section 653(a)(1) is very simple. It states:

An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) [anti-discrimination regulations required to be promulgated] and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.³

The clear intent of the statute appears to be simplicity in the certification process. In view of this, the Commission should adopt regulations that provide for quick certification. The purposes of the statute will be defeated if the Commission front loads the process so as to require that a ten-day approval process requires an unreasonably long data gathering process prior to submitting an application to the Commission. For that reason, NTCA believes the Commission should not require elaborate showings or reports but adopt a simplified licensing procedure in which LECs

³ 1996 Act, § 653(a)(1).

certify that they will comply with the regulations that are adopted in this proceeding and Part 64 of the Commission's rules.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

By: David Cosson (By LMG)
David Cosson
(202) 298-2326

By: L. Marie Guillory
L. Marie Guillory
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

April 1, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing
Comments of the National Telephone Cooperative Association
in CS Docket No. 96-46 was served on this 1st day of April 1996,
by first-class, U.S. Mail, postage prepaid, to the following
persons on the attached list:



Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826-0103
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

Mr. Kent Nilsson, Chief
Cost Analysis Branch, Accounting
and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 812-1600E
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Mr. Larry Walke
Cables Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 408A
Washington, D.C. 20554